

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-8680 of 2017

Muhammad Muqem

Versus

Federation of Pakistan & others

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

**BEFORE: Justice Irfan Saadat Khan,
Justice Muhammad Faisal Kamal Alam, JJ**

1. For hearing of CMA No.36336/2017 (stay)
2. For hearing of CMA No.36341/2017 (R-18)
3. For hearing of Main Case.

31.08.2021

Mr. Nadir Khan Burdi, advocate a/w Mr. Shoukat Ali,
advocate for the petitioner
Mr. Khursheed Javed, D.A.G for Respondents No.1.
Mr. Muhammad Ather, advocate holding brief for Mr.
Muhammad Shahzad Anjum, advocate for Respondent
No.2.
Mr. Kashif Hanif, advocate for Respondent No.3 a/w
Syed Muhammad Hassan Mirza, Deputy Chief Manager,
Muhammad Sachal, Deputy Manager, Sajid Khakhrani,
Surveyor.

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The instant petition has been filed on the ground that the Respondents have failed to perform their duty in accordance with law and seeking directions to the Respondents to immediately reinstall four meters at the premises of the petitioner situated at Plot No.431, Noor Khan Goth, Sector 11-A, Scheme No.33, Gujro, Gadap Town, Karachi.

Mr. Nadir Khan Burdi, advocate has appeared on behalf of the petitioner and stated that the petitioner is running his business since last 17 years in the said premises and in the year 2010 applied to the SSGC for installation of four gas meters. It is also the contention of the learned counsel for the petitioner that the petitioner has never defaulted in making the payment of the bills. However, on 30.08.2017 a raid was conducted on factory by the staff of SSGC and the four meters installed on the factory were removed and four new meters were installed. Thereafter the removed meters were inspected and it was

found that manipulation in the meters / gas connections have been made by the petitioner and the meters / gas connections meant for domestic use have been used for industrial / commercial purposes. Thereafter the department carried out legal proceedings against the petitioner, which included lodging of the FIR bearing No.45/2017 under Section 24 r/w Section 15/17 of Gas Theft Control and Recovery Act, 2016. The petitioner was apprehended in the said FIR and was produced before the Magistrate. The petitioner then got bail from the concerned Magistrate, which was subsequently confirmed. Counsel has referred to Order dated 18.10.2017 (at page 61) that report submitted under Section 173 of Cr.P.C was ordered in 'C' class and criminal prosecution ended in petitioner's favour. In the meantime the SSGC demanded a sum of Rs.6,00,000/- (Rupees Six Lac) from the petitioner being penalty / fine for reinstalling / restoration of the meters which was paid by the petitioner. The petitioner also availed the legal remedy by filing a representation before the OGRA Authorities and the OGRA Authorities vide order dated 09.02.2018 decided the matter partially in favour of the petitioner by directing SSGC to restore the two disconnected meters immediately. However, the penalty / fine imposed upon the petitioner for two meters were confirmed. He submitted, it is pertinent to note that no appeal against the said order of the OGRA was preferred by SSGC. The counsel therefore submitted that in view of the above explained position the gas meters / connections may be restored.

Mr. Khursheed Javed, DAG appearing for Respondent No.1 has supported the stance of the petitioner to the extent of decision of OGRA (Respondent No.2) dated 09.2.2018 appended with its comments, and contends that SSGC / Respondent No.3 is under legal obligation to restore the meters / gas connections of the petitioner and to comply with the order of the OGRA.

The counsel for OGRA Mr. Muhammad Ather, advocate has also supported the above stance of learned DAG.

Mr. Kashif Hanif, has appeared for SSGC and stated that SSGC is not obliged to comply with the order of the OGRA as according to him the said order is coram-non-judice; since the order of the OGRA is not as per the regulations of the SSGC. He further submitted that SSGC is ready to restore the connections of the petitioner subject to the condition that they should file a fresh application in this regard which would be considered sympathetically and thereafter gas connection would be given, in accordance with the relevant rules and regulations.

Mr. Nadir Khan Burdi, counsel for the petitioner while giving his rebuttal stated that this is not a case of new connection rather this is a case of restoration of the old connections, hence according to him there is no occasion of filing any fresh application. He stated that the order of the OGRA is in his favour and that the petitioner has been acquitted on both civil and criminal charges hence the SSGC is under obligation to restore the gas connections of the petitioner in accordance with the rules and regulations.

We have heard all the learned counsel at considerable length and have also perused the record.

The operative part of the above order dated 09.02.2018 passed by Respondent/OGRA is as follows:

“Accordingly, the Respondent is hereby directed to waive of claim of Rs.55,400/- and Rs.48,300/- from the Complainant’s account booked to him against domestic meter No.27353782 and No.27368120 respectively and his gas supply may be restored immediately against these two meters, if still disconnected. However, the Respondent’s raised claims against commercial meter No.05-00806 and domestic meter No.13707685 amounting to Rs.168,600/- and Rs.125,900/- respectively proved correct and justified, hence, the Respondent should recover the said claims and the Complainant shall be liable to pay the same and subsequent to recovery of

claims the Complainant's gas supply may be restored as per the Company policy. The compliance report may be submitted by the Respondent within 30 days of receipt of decision."

So far as the contention of Mr. Kashif Hanif, is concerned that SSGC is not obliged to file an appeal under Section 12 of the OGRA Ordinance, 2002 against the order of the OGRA, as the same is coram-non-judice and not in accordance with law, we do not find ourselves to be in agreement with the arguments of Mr. Kashif Hanif, as if the SSGC is aggrieved with the order of the OGRA they should have filed an appeal against the order of the OGRA dated 09.02.2018, which admittedly they have not. Moreover, if the SSGC was not satisfied with the assumption of jurisdiction by the OGRA they should have taken such stance before the OGRA with regard to their jurisdiction, which also was not done. Hence in our view this argument is not available to Mr. Kashif Hanif, now.

So far the argument of Mr. Kashif Hanif, is concerned that petitioner should file a fresh application for restoration / reinstallation of meters is concerned, here also we have noticed that the instant case is a matter of restoration of old connections and is not a case of any fresh application, as it is apparent from the record, that when the SSGC officials visited and raided the premises they allegedly found some tampering in the already installed meters, hence we are of the view that this is not a case of fresh installation rather a case of restoration of the old meters / connections already available at the petitioner's premises. We, therefore, under the circumstances direct SSGC to restore the old meters of the petitioner within seven days' time from today.

However, before parting with the order, we would like to observe that SSGC would be at liberty to inspect premises as and when required to forestall the unauthorized and illegal use of the said meters,

including, using domestic consumption as commercial / industrial. In case any misappropriation in the meters / connections is found they would be at liberty to take appropriate action, as provided under the law, against the petitioner. Petitioner is also directed to clear all the legal dues, if any, of the SSGC in accordance with law within seven days' time. With these directions the instant petition alongwith all the pending and listed applications stands disposed of.

JUDGE

JUDGE

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